IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25/09/2002

CORAM

THE HONOURABLE MR. JUSTICE A. KULASEKARAN

Criminal R.C. No. 1673 of 2002
and
Crl.MP No. 9265 of 2002

A.R. Saravanan ... Petitioner

-Vs-

State through Inspector of Police
Crime Branch CID, Madurai City
K-1 Anna Nagar Police Station
Madurai ... Respondent

Revision under Sections 397 & 401 of Cr.P.C. against the order dated 27-06-2002 made in CMP No. 1768 of 2002 in C.C. No. 12 of 2001 on the file of JM-VII, Madurai.

!For Petitioner : Mr. R. Krishnamoorthy, Senior Counsel

^For Respondent : Mr. A.N. Thambidurai, Government Advocate (Crl.side)

:ORDER

The revision petitioner is the 2nd accused in C.C. No. 12 of 2001 charged for the offences under Sections 39 (1), 44 (1) (c) of Indian Electricity Act and 484 IPC r/w Section 34 IPC has preferred this revision against the order of dismissal passed in his petition under Section 239 of Cr.P.C. for discharge by the trial court.

2. It is the case of the petitioner that originally this petitioner and first Accused were partners under a partnership deed dated 08-11-1999, which was re-constituted on 01-04-1985. As per the reconstituted partnership deed, the 1st Accused is the Managing Partner, who has been looking after the business of Sundaram Theater at Madurai. The theater was leased out to the 3rd Accused on 01-06-1997. However, the "C" Form licence of the cinema theater stands in the name of the 1 st and 2nd Accused. On 08-11-1999, officials of Tamil Nadu Electricity Board, Madurai inspected the

service connection Nos. 50 and 51 installed in the theater where they found that the meters were allegedly tampered and detected the commission of energy theft. Thereafter, a case was registered against the petitioner and other accused for the offences stated above.

3. Mr. R. Krishnamoorthy, learned Senior counsel appearing for the petitioner submitted that the petitioner's name did not find place in F.I.R. but he was falsely implicated later at the time of filing charge sheet; that the petitioner has nothing to do with the running of the theater. In support of his arguments, the learned Senior counsel has brought to the notice of this Court the below mentioned documents.

(i) Sworn Statement of Accused No.3 in C.C. No. 392 of 1999 on the file of the Judicial Magistrate No.7, Madurai

(ii) The assessment order in Appendix VII passed by the Electricity Board only against the 1st and 3rd Accused.

(iii) Counter affidavit of A3 in O.S. No. 1053 of 2000 on the file of District Munsif Court, Madurai

(iv) The statement recorded under Section 161 of Cr.P.C. of Mahadevan and Shanmugam, Assistant Executive Engineers, TNEB, Selvaraj, Executive Engineer (Anti-theft Squad), TNEB, R. Somasundaram, Executive Engineer, TNEB, Duraipandian, Foreman, TNEB, Shanmugam, Assessor, TNEB and Selvinraj, Distributor, TNEB.

The learned Senior counsel further submitted that the above statements of TNEB officials clearly show that the 3rd Accused was the lessee of the theater during the relevant period as such the petitioner has no role in the business of the theater, but the trial court has failed to note that the charge against the petitioner is groundless.

4. The learned Senior counsel appearing for the petitioner relied on the following decisions in support of his case.

(i) (2002) 2 Supreme Court Cases 135 (Dilawar Balu Kurane Vs. State of Maharashtra) wherein in Para-12 it was held thus:-

"12. Now, the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 22 7 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said Section has the undoubted power to sit and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave

suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enuiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

ii) 1999 Law Weekly (Criminal) Madras – 398 (P. Jeyanthi Vs. State rep. by Sub-Inspector of Police (Crimes) Maduravoyal Police Station, Chinglepet District) wherein in Para-11 it was held thus:-

"11. Facts stated earlier clearly show that as far as the petitioner is concerned, there is not even a whisper nor any shred of evidence, nor anything, to show, apart from the presumption drawn by the respondent, that there was any act committed by the petitioner from which a reasonable inference can be drawn that she could also be vicariously liable. On facts, it can be safely held that no case against the petitioner had been made out ex facie on the allegations made in the records forwarded to the court and therefore her prayer to quash the proceeding as against her will have to be upheld."

iii) AIR 1974 Supreme Court 434 (Smt. Manibai and another Vs. The State of Maharashtra) wherein in Para-5 it was held thus:-

"5. In appeal before us, Mr. Gupte on behalf of the accused appellants has contended that the High Court was in error in convicting Manibai. As against that Mr. Wad on behalf of the State has submitted that this Court should not interfere with the conviction of Manibai. In this respect we find that Manibai was admittedly not present at the time the coconut oil was purchased by the food inspector Mahajan from Pranjivan Accused. The High Court in the course of its judgment has arrived at the finding that Manibai is not in charge of nor is she actually conducting the business carried on at the shop from which the food Inspector purchased the coconut oil. In the circumstances, the fact that Manibai is the licensee of the shop would not warrant her conviction. According to Section 17 (1) of the Act, where an offence under the Act has been committed by a company, every person who at the time the offence was committed was in charge of and was responsible for the conduct of the business of the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The sub-section is followed by the proviso according to which nothing contained in the sub-section would render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that be exercised all due diligence to prevent the commission of such offence. Company has been defined in Section 17 to mean any body corporate and to include a firm or other association of individuals. Directors in relation to a firm has been defined to mean a partner in the firm. There is nothing to show that the business carried on in the shop in question was that of a firm and that Manibai was a partner of the said firm."

5. Now, we look into the provisions of Section 239 of Cr.P.C.

"239. When accused shall be discharged – If upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

6. Under Section 239 of Cr.P.C. it is the duty of the trial court to look into whether there is ground for presuming commission of offence or whether the charge is groundless. The trial court is required to see whether a prima facie case pertaining to the commission of offence is made out or not. At the stage of 239 of Cr.P.C., the trial court has to examine the evidence only to satisfy that prima facie case is made out or not. The Magistrate has to consider the report of the prosecution, documents of both sides, hear the arguments of the accused and prosecution and arrive at a conclusion that the materials placed, on their face value would furnish a reasonable basis or foundation for accusation.

7. The words "groundless" employed in Section 239 means there is no ground for presuming that the accused is guilty. When there is no ground for presuming tat the accused has not committed an offence, the charge must be considered as groundless.

8. In this case, the sworn statement of A3 dated 16-08-1999 in C.C. No. 392 of 1999 on the file of learned Judicial Magistrate No.7, Madurai, the assessment order for theft of energy made by the electricity board against Accused 1 and 3, counter affidavit filed by the 3rd Accused in I.A. No. 987 of 2000 in O.S. No. 1053 of 2000, the 161 statement of TNEB officials namely Mahadevan, Assistant Executive Engineer; Shanmugam, Assistant Executive Engineers, Selvaraj, Executive Engineer (Anti-theft Squad), R. Somasundaram, Executive Engineer, Duraipandian, Foreman, Shanmugam, Assessor, and Selvinraj, Distributor would clearly show that the 3rd Accused was in possession of the theater during the relevant period. In other words, the petitioner herein was not at all in administration of the theater during the relevant period. The trial court has failed to consider the above said evidence before dismissing the petition under Section 239 of Cr.P.C. preferred by the petitioner herein. Except the usage of words "prima facie case has been made out" nothing has been whispered about the satisfaction arrived to say prima facie case made out on examination of particular documents or evidence. The prosecution has also not pointed out any particular document or evidence when opportunity was afforded by the trial court to justify the case against the petitioner for the alleged charges. Furthermore, the mere fact that the petitioner is one of the licencees of "C" Form licence is not a sufficient ground to implicate him in the case. I do

not find any material to proceed against the petitioner for the offence Under Section 39 (1), 44 (1) (c) of Indian Electricity Act and 484 IPC r/w. Sec. 34 IPC. The charges against the petitioner is totally groundless.

9. The judgments relied on by the learned Senior counsel for the petitioner stated supra are squarely applicable to the facts and circumstance

of the case. Hence, I am of the view that the trial court, while dismissing the application for discharge has failed to consider the above said facts and has mechanically come to the conclusion that there is a prima facie case made out against the petitioner/2nd Accused as such the order passed by the trial court is liable to be set aside and accordingly set aside.

In the result, the revision petition is allowed. No costs. Connected Crl.MP is also closed.

25-09-2002
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Index : Yes
Website : Yes

To
1. The Judicial Magistrate VII
Madurai

2. The Inspector of Police
Crime Branch CID, Madurai City
K-1 Anna Nagar Police Station
Madurai

3. The Public Prosecutor
High Court